



Grand Valley State University

Harassment and Discrimination: How to Conduct Effective Investigations in Higher Education

Presented by:

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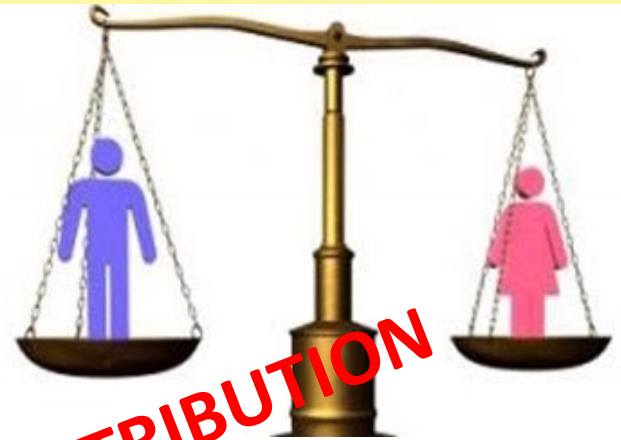
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Why Investigate?

- Legal Reasons

- Title IX of the Educational Amendments of 1972 to the Civil Rights Act of 1964.
 - Requires colleges and universities to investigate allegations of sex discrimination, sexual harassment and assault, domestic violence, and stalking.
- Title VII of the Civil Rights Act of 1964 and other similar laws prohibiting discrimination:
 - Taking steps to investigate and promptly correct harassment may be a defense to discrimination and harassment claims.



Why Investigate?

- Practical Reasons

- Protects employees and students
- Protects the Institution.
 - Complies with the law.
 - Information collected allows the Institution to take appropriate action.
- Enhances employee relations
 - Turnover.
 - Morale.
 - Motivation and Productivity.
- Deters future misconduct.



Title IX



Title IX

- Title IX has very specific requirements regarding when, how, and why an institution should conduct an investigation.
- These specific requirements mean institutions have limits on when they can begin an investigation under Title IX.

Title IX – Why Investigate?

Receipt of allegations of conduct that constitutes, or may constitute, sexual harassment as defined by Title IX.



Title IX – When Can the Institution Investigate?

Upon the filing of a formal complaint.



Title IX – How Should Institution Respond?

- Investigation.
- Hearing which is “tried” by a decision-maker who is not the same person as the investigator.
- Parties may have advisors during the investigation and must be represented by an advisor at the hearing.
- Must allow appeal.

Non-Title IX Claims

- Institutions have much more flexibility regarding when, how, and why they investigate other harassment and discrimination claims.
 - When: Have knowledge of behavior that may be harassing or discriminatory. No formal complaint is required.
 - Why: Investigate claims based on all protected characteristics, not just sex.
 - How: Way that is effective to eliminate and address discrimination and harassment.

What is Title IX?

“No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or **be subjected to discrimination** under any education program or activity receiving federal financial assistance.”

DISCRIMINATION

Title IX – Sexual Harassment Defined

- Quid Pro Quo Harassment;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking.

Title IX – Scope of Coverage

Covers sexual harassment occurring “***in the school’s education program or activity***, against a person ***in the United States.***”

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Title IX – Scope of Coverage

- Buildings or other locations that are part of the school's operations (including remote learning platforms).
- Off-campus settings where school exercises substantial control over the respondent and the context in which the alleged harassment occurred.
- Off-campus buildings owned or controlled by a student organization officially recognized by the institution.
- In the United States.

Title IX – Scope of Coverage

- Includes sexual harassment by or against students **and** employees.
- Covers:
 - Student on student conduct.
 - Student on employee conduct.
 - Employee on student conduct.
 - Employee on employee conduct.

Title IX – Who Can Report?

- Anyone can report sexual harassment.
 - Reporter can be the alleged victim.
 - Reporter can be someone else.



Title IX – How to Report

- Reports can be made:
 - In person.
 - By mail.
 - By telephone.
 - By e-mail.
 - To the Title IX Coordinator.
 - By any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- Reports can be made at any time (including during non-business hours).



Title IX – When Does an Institution Have an Obligation to Respond?

An Institution must respond when it has **actual knowledge** (*i.e.*, notice) of sexual harassment or allegations of sexual harassment.



Title IX – Who Can Have Actual Knowledge?

- Title IX Coordinator.
- A designated school official with authority to institute corrective measures on the school's behalf. For instance,
 - President.
 - Vice Presidents.
 - Human Resources Director.
 - Academic Deans.
 - Associate Academic Deans.
 - Campus Police.
 - Athletic Director.
- ***Note: School does not have actual knowledge just because a mandatory reporter has knowledge.***

Title IX – When Must an Institution Investigate?

- Upon receipt of a ***formal complaint***:
 - A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation.
 - A complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

Title IX – Investigation Requirements

- Investigate allegations in a formal complaint.
- Send written notice to both parties of the allegations in the formal complaint.
- Schools may not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).
- Allow parties opportunity to select an advisor of their choice (may be an attorney).

Title IX – Investigation Requirements

- Send written notice of any investigative interviews, meetings, or hearings (surprise interviews are barred).
- Send the parties, and their advisors, evidence directly related to the allegations with at least 10 days for the parties to inspect, review, and respond to the evidence.
- Send the parties, and their advisors, an investigative report summarizing relevant evidence with at least 10 days for the parties to respond.
- **Important:** The Investigator and the Decision-maker may not be the same person.

Reasons Not to Investigate Under Title IX

- An institution may only investigate **formal written complaints**.
- The conduct alleged must meet Title IX's definition of **sexual harassment** for the investigation to occur.
- The alleged harassment must have occurred **in the school's education program or activity** against a person **in the United States**.

Reasons Not to Investigate Under Title IX

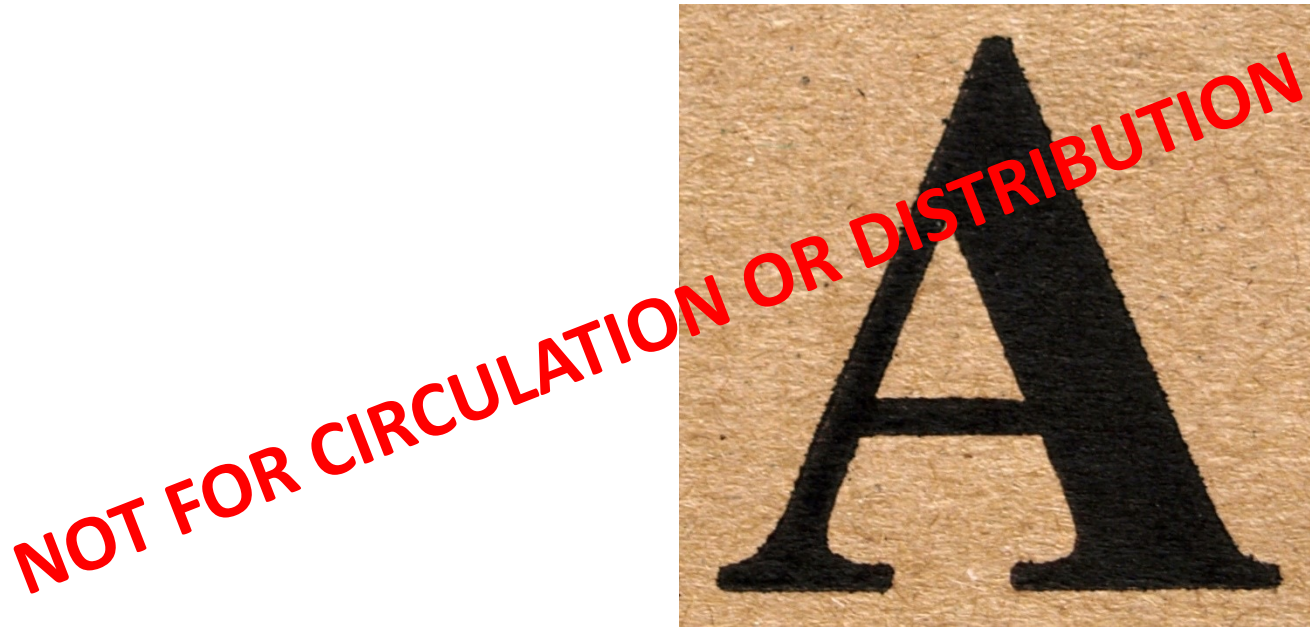
If Title IX does not apply, the Institution may still investigate the complaint under another process if appropriate.

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GVSU Grievance Processes

- GVSU has three processes for responding to reports of harassment, discrimination, retaliation and sexual misconduct.
- Processes are explained in GVSU's Procedures for Responding to Reports of Harassment, Discrimination, Retaliation, & Sexual Misconduct (including Sexual Assault, Intimate Partner Violence, Stalking, & Sexual Exploitation)
- [Policy & Procedures - Office for Title IX and Institutional Equity \(TIXIE\) - Grand Valley State University \(gvsu.edu\)](#)

Process A – Title IX



Process A is used when complaint falls within parameters of Title IX, as discussed.

Process B – Sexual Misconduct



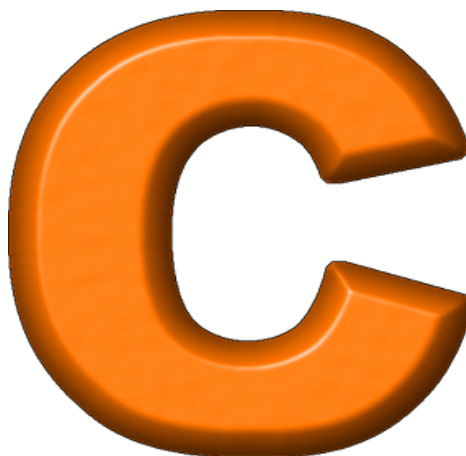
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Process B is used when Process A does not apply or Title IX complaint has been dismissed by Title IX Coordinator.

Process C – Harassment and Discrimination

Process C is used to address claims of harassment and discrimination that do not fall under Process A or B.

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How to Conduct an Investigation



When to Investigate

- Formal sexual harassment complaint signed by Complainant or Title IX Coordinator.
- Where allegations do not fall under Title IX but violate some other policy.

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When to Investigate (non-Title IX)

- Formal complaints.
- Anonymous complaints.
- Reports to supervisor, management, or other Institutional personnel.
- EEOC or agency charge.
- Having knowledge of harassing, discriminatory, threatening or other inappropriate behavior.

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Planning the Fact Finding

- What is the question you are trying to answer?
 - Review policy.
 - This will help you identify what questions you need to get answered.
 - Will also help you map out your investigation plan.

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Investigation Plan

- Consider location, notification, and order of interviews.
 - Decide whether to bring someone with you to the interviews (almost always yes).
 - Where to do the interview.
 - Order of interviews (subject to witness availability).
- Identify whether interim actions are necessary.

Interview Basics

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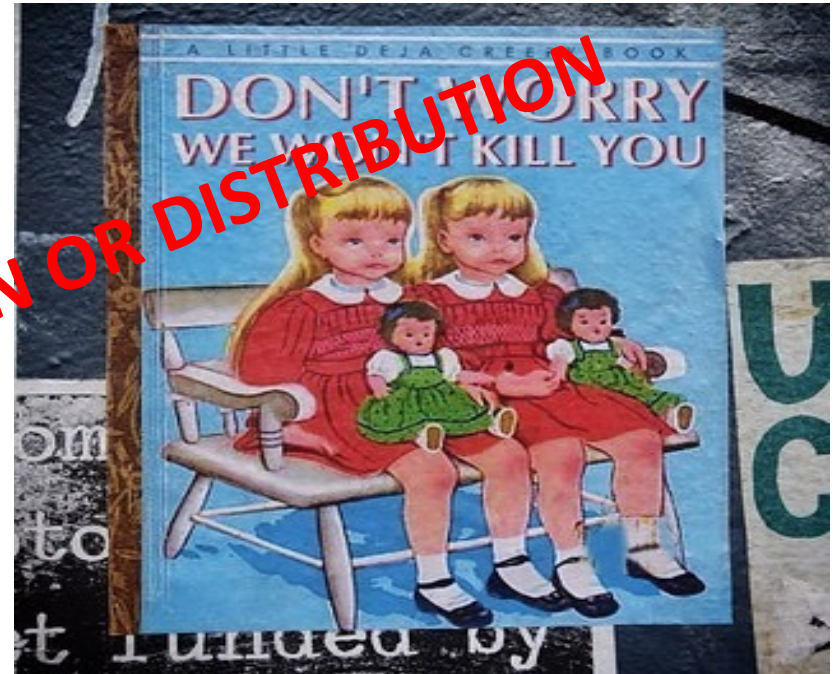


Interview Basics

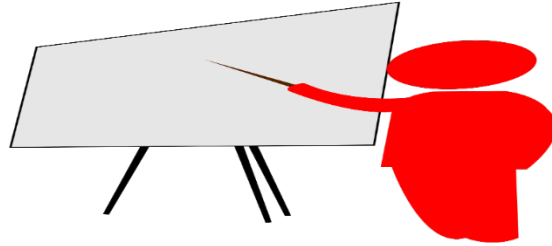
- Typical strategy for witness interviews:
 - Put the witness at ease.
 - Explain the procedure and situation.
 - Let the witness give a narrative.
 - Ask questions based on the narrative and questions that may be outside the narrative.

Putting the Witness at Ease

- Private location.
- Comfortable.
- Avoid displays of power.
 - “Scary” office.
 - Sitting across desk.
 - High chair, etc.
- Have a note-taker so the interviewer can just have a conversation.



Explain the Procedure



- Set the tone for the interview.
- Review the policy as necessary.
 - Be clear about confidentiality.
 - Title IX: no gag orders.
 - Other: Can require confidentiality.
 - Explain what steps have been taken.
 - Remind them of anti-retaliation provisions.

Questioning



- The goal is an open ended conversation.
- The narrative – just let the witness talk.
- Fill in the gaps and get specifics.
- Questions outside the narrative are particularly helpful for third party witnesses.
- Be non-judgmental.
- Get more information than you give.
- Listen carefully for witnesses and tangible evidence that would be helpful.

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Follow Up

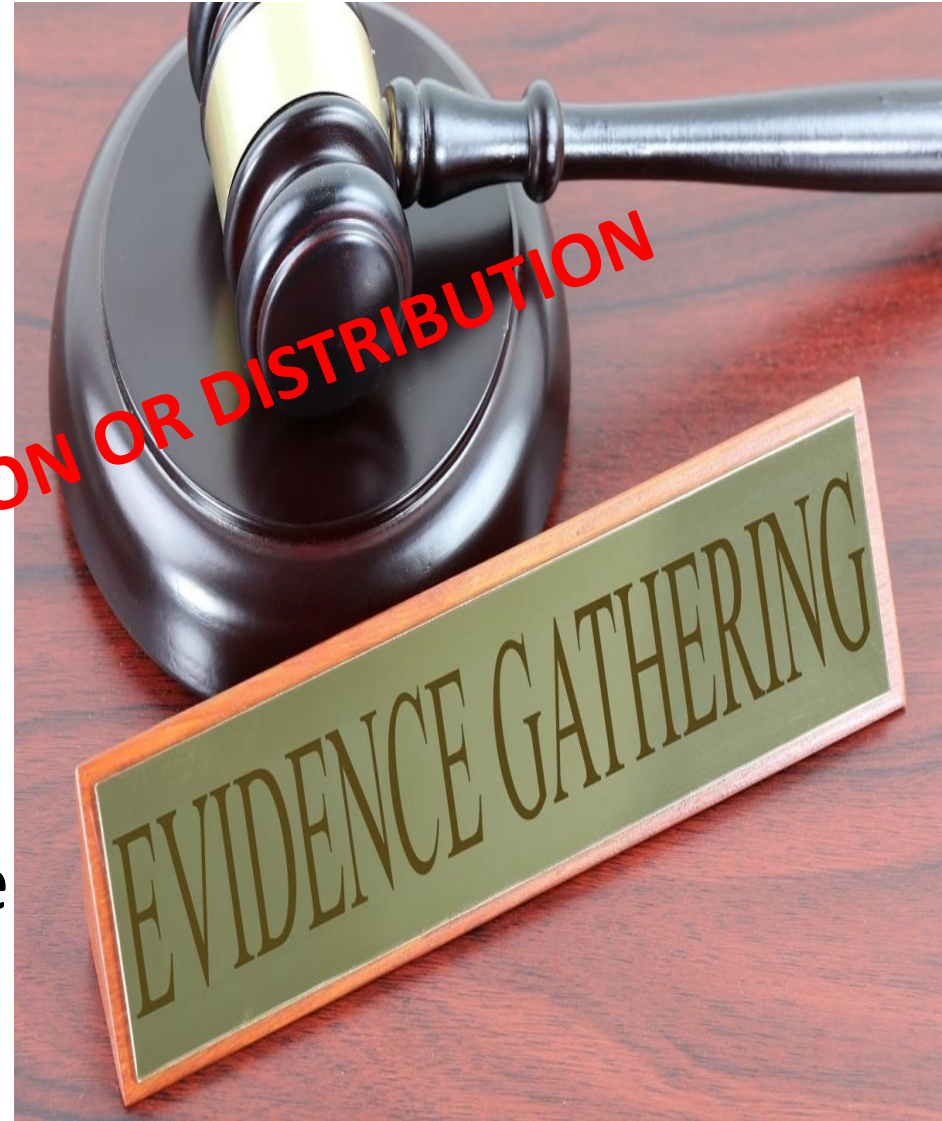
- Consider interviewing the Complainant again.
- Purpose of follow-up interviews is to get clarification on key facts.



Collect Evidence

- Photographs.
- Police records.
- Social media.
- Text messages.
- Phone records.
- Other tangible evidence
- Personnel files.

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Beware of Spoliation

- Automatic email deletions.
- Cell phone text records.
- Video overwrite.
- Preserve, preserve, preserve!!!!



Making Credibility Determinations

- Watch for witnesses changing their story – particularly after witnesses may have talked with each other.
- Is the witness' story consistent with tangible evidence?
- Does it make sense?
- A Respondent's statements are not inherently less valid than a Complainant's and vice versa.

Prepare the Written Report

- Title IX
 - Must give Complainant and Respondent chance to review evidence and 10 days to respond before preparing the report



Prepare the Written Report

- Must give Complainant and Respondent chance to review report and 10 days to respond.
- Do not make a decision.
- Other investigations
 - Depends on your policies.
 - Investigator and decision-maker can be the same person.

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Preparing the Written Report

- It's important to connect ALL of the dots to paint a complete picture that fully supports any conclusions.
- Keep an eye out for gaps or missing connections to produce the strongest investigative report possible.



Preparing the Written Report

- **Remember:**
- Question is whether a policy has been violated.
- Outline the procedural steps that were followed.
- Paint the complete picture with relevant, unbiased evidence.
- Write from a point of neutrality.
 - Avoid implications of bias or conflicts.

Desired Outcome - Complainant

- I was heard.
- I was told and understood what to expect during the course of the investigation.
- I was not openly doubted or debated.
- I was not interrupted.
- I know something happened in response to my complaint.
- I was taken seriously.
- I was treated fairly.

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Desired Outcome – Respondent

- I was informed of the complaint.
- I had an opportunity to respond.
- I was told no conclusions would be drawn until fact finding complete.
- I was not treated as if I was guilty until proven innocent.
- I was taken seriously.
- I was treated fairly.
- I knew what to expect during the course of the investigation.

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